

DEC 27 2007

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MONTANA OFFICE

In re:

ASARCO LLC, *et al.*,

Debtors.

§
§
§
§
§
§

Case No. 05-21207

Chapter 11

Jointly Administered

**MOTION FOR ORDER APPROVING COMPROMISE AND SETTLEMENT BETWEEN
ASARCO LLC AND VARIOUS GOVERNMENTAL AND PRIVATE PARTY ENTITIES
REGARDING THE SILVER BOW CREEK/BUTTE SUPERFUND SITE AND BUTTE MINE**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE RICHARD S. SCHMIDT, UNITED STATES BANKRUPTCY JUDGE:

ASARCO LLC ("ASARCO" or the "Debtor") respectfully files this Motion for Order Approving Compromise and Settlement Between ASARCO LLC and Various Governmental and Private Party Entities Regarding the Silver Bow Creek/Butte Superfund Site and Butte Mine (the "Motion").

I. PARTIES, JURISDICTION, AND VENUE

1. On August 9, 2005 (the "Petition Date"), ASARCO filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this

4400416



Court. On April 11, 2005, several of ASARCO's wholly-owned direct or indirect subsidiaries (the "Asbestos Subsidiary Debtors"¹) filed their voluntary petitions in this Court (the "Subsidiary Cases"). Later in 2005, several of ASARCO's other wholly-owned direct or indirect subsidiaries (the "2005 Subsidiary Debtors"²) filed similar petitions for relief in this Court. Further, on December 12, 2006, three more ASARCO subsidiaries (the "2006 Subsidiary Debtors"³) filed similar petitions for relief with this Court (collectively with ASARCO, the Asbestos Subsidiary Debtors and the 2005 Subsidiary Debtors, the "Debtors"). The Debtors' cases are collectively referred to as the "Reorganization Cases."

2. The Debtors remain in possession of their property and are operating their businesses as Debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors was appointed in the Subsidiary Cases, and an official committee of unsecured creditors has also been appointed in ASARCO's case. No trustee or examiner has been appointed in any of the Reorganization Cases.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Court may hear and determine this Motion under the standing order of reference issued by the United States District Court for the Southern District of Texas under 28 U.S.C. § 157. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b). Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicates

¹ The Asbestos Subsidiary Debtors consist of the following five entities: Lac d'Amiante du Québec Ltée (f/k/a Lake Asbestos of Quebec, Ltd.); Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc. (f/k/a/ Cement Asbestos Products Company); and Cement Asbestos Products Company.

² The 2005 Subsidiary Debtors are: ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; AR Sacaton, LLC, an Arizona limited liability company; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; and Salero Ranch, Unit III, Community Association, Inc. Encycle/Texas, Inc. also filed a petition for relief; but its case, which was later converted to a chapter 7 case, is being administered separately.

³ The 2006 Subsidiary Debtors are: Southern Peru Holdings, LLC; AR Sacaton, LLC, a Delaware limited liability company; and ASARCO Exploration Company, Inc.

for the relief requested herein are section 363 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure.

II. RELIEF REQUESTED

4. The Debtor seeks approval pursuant to section 363(b)(1) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure of its compromise and settlement with the United States of America ("United States") on behalf of the United States Environmental Protection Agency ("EPA"), the State of Montana ("State"), by and through the Montana Department of Environmental Quality ("MDEQ"), and Montana Resources, Inc. ("MRI"), (collectively the "Parties"), including the claims of the Atlantic Richfield Company ("ARCO") assigned to MRI.

III. BACKGROUND AND SUMMARY OF PROPOSED SETTLEMENT

5. The EPA, pursuant to its authority under the Comprehensive Environmental Response, Compensation and Liability Act as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), added the Silver Bow Creek / Butte Area Site (the "SBCB Site") to the National Priority List on September 8, 1983.

6. The Mine Flooding Operable Unit is a part of the SBCB Site and is known as the Butte Mine Flooding Site.

7. The following proofs of claim relating to the SBCB Site were filed:

(a) Claim Nos. 10746, 11008, and 11009 filed by the United States on behalf of EPA;

(b) Claim Nos. 10524, 10525, 10526, 10527 filed by the State; and

(c) Claim Nos. 10872, 10876, 11570, 11571 filed by MRI.⁴

⁴ Claim Nos. 11570 and 11571 were originally filed by MRI on behalf of ARCO but ARCO subsequently transferred those claims to MRI.

The listed claims for the SBCB Site were scheduled for hearing as part of the Band 2 sites of the Case Management Order Establishing Procedures for Estimation of ASARCO LLC's Environmental Liabilities ("CMO").

8. The Parties conducted negotiations regarding these claims over several months. As a result, they have been able to reach agreements resolving their disputes as to the SBCB Site, except with respect to MRI's claim for future reclamation costs with respect to the SBCB Site.

9. The agreement is set forth in a settlement agreement (the "Settlement Agreement") to which ASARCO, the United States, the State, and MRI are the parties and which resolves all claims, except as noted above in Paragraph 8, against ASARCO asserted by these Parties in regards to the SBCB Site. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

10. More specifically, the Settlement Agreement provides as follows:

(a) MRI will have an allowed general unsecured claim in the total amount of \$8,670,147 for the MRI Future Remediation Claim (as that term is defined in the Settlement Agreement) and this allowed general unsecured claim shall not be subject to disallowance under 11 U.S.C. § 502(d).

(b) The MRI Past Costs Claim (as that term is defined in the Settlement Agreement) will be estimated at \$5,259,108 for all purposes, provided that the foregoing shall not preclude ASARCO from seeking disallowance of such claim under 11 U.S.C. § 502(d) subject to the conditions set forth in Paragraphs 3 and 17 of the Settlement Agreement.

(c) The MRI-ARCO Natural Resource Damages Claim (as that term is defined in the Settlement Agreement) will be estimated in the total amount of \$4,850,000 for all purposes, provided that the foregoing shall not preclude ASARCO from seeking disallowance of such claim under 11 U.S.C. § 502(d) subject to the conditions set forth in Paragraphs 3 and 17 of the Settlement Agreement.

(d) The Settlement Agreement is subject to approval by this Court and the United States District Court for the District of Montana.

11. ASARCO hereby seeks authority to enter into the Settlement Agreement, and compromise its controversy with the other Parties in accordance therewith.

IV. LAW AND ARGUMENT

12. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure permits this Court, following notice and a hearing as provided by Bankruptcy Rule 2002, to approve a compromise of controversy. Rule 9019(a) provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a). Approval of a compromise is within the sound discretion of the bankruptcy court. *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602-03 (5th Cir. 1980) (decided under Bankruptcy Act). Settlements are considered a "normal part of the process of reorganization" and "desirable and wise method[] of bringing to a close proceedings otherwise lengthy, complicated and costly." *Jackson Brewing*, 624 F.2d at 602 (citations omitted).

13. Neither Bankruptcy Rule 9019(a) nor any section of the Bankruptcy Code explicitly sets forth the standards by which a court is to evaluate a proposed settlement for approval. However, the standards for approval of settlements in bankruptcy cases are well-established and focus upon whether the proposed settlement is reasonable and in the best interests of creditors. In *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968), the seminal case on approval of settlements in bankruptcy cases, the United States Supreme Court held that the trial court must make an informed, independent judgment as to whether a settlement is fair and equitable, and explained as follows:

There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an

educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

309 U.S. at 424. *See also* *AWECO*, 725 F.2d at 298-99 (reversing settlement with unsecured litigation claimant due to insufficiency of facts to determine whether settlement was fair and equitable to other creditors); *American Can Co. v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 608 (5th Cir. 1980) (noting that "there must be a substantial factual basis for the approval of a compromise.").

14. Generally, the role of the bankruptcy court is not to decide the issues in dispute when evaluating a settlement. Instead, the court should determine whether the settlement is fair and equitable as a whole. *TMT Trailer*, 390 U.S. at 424; *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993).

15. In deciding whether to approve a settlement, the following factors must be considered:

- a. the probability of success in the litigation, with due consideration of the uncertainty in fact and law;
- b. the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- c. all other factors bearing on the wisdom of the compromise.

Jackson Brewing, 624 F.2d at 602 (citing *TMT Trailer*).

16. Under the rubric of the third, catch-all provision, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*,

68 F.3d 914, 917 (5th Cir. 1995). Second the court should consider "the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Id.* at 918 (citations omitted).

17. ASARCO believes that the Settlement Agreement meets the standards and is reasonable, fair and equitable. The Settlement Agreement resolves ASARCO's liabilities regarding the SBCB Site with respect to the United States, the State, and MRI (and ARCO's claims assigned to MRI), and thereby allows those claims to be removed from the CMO. ASARCO believes that the Settlement Agreement represents a fair and reasonable resolution of the amount of such claims, in light of the relevant facts relating to the SBCB Site. Moreover, the Settlement Agreement saves significant attorneys' fees and expenses that would otherwise be expended in prosecuting the estimation of these issues, and will also allow valuable Court time to be allocated to contested claims under the CMO.

18. Further, the Settlement Agreement eliminates the substantial litigation risks faced by both sides. Estimation of the liabilities addressed by the Settlement Agreement would require the Court to resolve a number of hotly contested issues. As the Court will recall, the government says that obligations under injunctive orders are nondischargeable, whereas ASARCO contends that such obligations are dischargeable if the payment of money is an alternate means of satisfying the injunction. The United States sought to compel ASARCO to conduct the future response actions at the SBCB Site and the State sought to hold ASARCO jointly and severally responsible for any future response costs associated with the SBCB Site. According to the governments' experts, these claims were estimated at approximately \$200 million. However, ASARCO's experts contended that the environmental harms at the SBCB Site were divisible or allocable on an equitable basis, resulting in a direct share for ASARCO of less than \$10 million.

The issues of divisibility and allocability are among the most, if not the most, strongly argued issues on both sides, with among the greatest financial consequences of any of the environmental legal questions in this case.

19. In addition, the Settlement Agreement provides an efficient and equitable approach for not only the resolution of the claims of the United States and the State, but also the resolution of most of the claims of other key private entities at the SBCB Site in a manner that may not have been possible through an estimation hearing for several reasons. As the Settlement Agreement details, the operational and environmental regulatory/cleanup history of the SBCB Site has been a complicated one, as it has been the subject of federal and State consent decrees and related or resulting litigation regarding the past or future costs to remediate or restore the Site. In resolving the relevant claims, the Settlement Agreement also ensures that the future of the SBCB Site is more certain than in the past by establishing a partial financial framework, including, for example, an escrow account for future remediation costs, related to the funding and accomplishment of the cleanup of the SBCB Site. Thus, the Settlement Agreement will aid cleanup, remediation, and natural resource restoration activities at the SBCB Site as a consequence of the funds to be paid out pursuant to the Settlement Agreement. The Settlement Agreement thereby promotes the public health and welfare.

20. The Settlement Agreement is the product of arms-length and often contentious bargaining.

21. For these reasons, ASARCO believes that approval of the Settlement Agreements is in the best interests of its creditors and its estate.

V. CERTIFICATE OF SERVICE

22. In compliance with Bankruptcy Local Rule 9013(f), ASARCO will file or cause to be filed as a separate document a Certificate of Service containing the names and addresses of

the parties served, the manner of service, the name and address of the server, and the date of service.

WHEREFORE, ASARCO respectfully requests that the Court enter an order granting the Motion and granting such other and further relief as is just and proper.

Dated: December 3, 2007

Respectfully submitted,

BAKER BOTTS L.L.P.

Jack L. Kinzie
State Bar No. 11492130
James R. Prince
State Bar No. 00784791
2001 Ross Avenue
Dallas, Texas 75201-2980
Telephone: 214.953.6500
Facsimile: 214.661.6503
Email: *jack.kinzie@bakerbotts.com*
jim.prince@bakerbotts.com

and

BAKER BOTTS L.L.P.

/s/ Tony M. Davis

Tony M. Davis
State Bar No. 05556320
Mary Millwood Gregory
State Bar No. 14168730
One Shell Plaza
Houston, Texas 77002
Telephone: 713.229.1234
Facsimile: 713.229.1522
Email: *tony.davis@bakerbotts.com*
mary.gregory@bakerbotts.com

and

**JORDAN, HYDEN, WOMBLE, CULBRETH &
HOLZER, P.C.**

Shelby A. Jordan
State Bar No. 11016700
Harlin C. Womble
State Bar No. 21880300
Nathaniel Peter Holzer
State Bar No. 00793971
Suite 900, Bank of America
500 North Shoreline
Corpus Christi, Texas 78471
Telephone: 361.884.5678
Facsimile: 361.888.5555
Email: *sjordan@jhwclaw.com*
hwomble@jhwclaw.com
pholzer@jhwclaw.com

**COUNSEL TO DEBTORS AND DEBTORS-IN-
POSSESSION**

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:)	
)	
ASARCO LLC, et al.)	Case No. 05-21207
)	Chapter 11
Debtors.)	
_____)	

**PARTIAL SETTLEMENT AGREEMENT REGARDING THE SILVER BOW CREEK/
BUTTE SUPERFUND SITE AND BUTTE MINE**

WHEREAS, the United States Environmental Protection Agency ("EPA") pursuant to its authority under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), added the Silver Bow Creek / Butte Area Site (the "SBCB Site") to the National Priority List on September 8, 1983;

WHEREAS, the United States, on behalf of EPA, and the State of Montana, by and through the Montana Department of Environmental Quality, have alleged that ASARCO, LLC, formerly known as ASARCO Incorporated, a New Jersey corporation ("ASARCO"), and ASARCO Master, Inc., formerly known as AR Montana Corporation ("ASARCO Master") are potentially responsible parties with respect to the Mine Flooding Operable Unit of the SBCB Site, known as the Butte Mine Flooding Site, which is a part of the SBCB Site;

WHEREAS, ASARCO, ASARCO Master, Atlantic Richfield Company ("ARCO"), Montana Resources, Montana Resources Inc. ("MRI"), and Dennis Washington (together

"Settling Defendants") negotiated a Consent Decree with the United States and the State of Montana (the "State") which was entered by the U.S. District Court for the District of Montana on August 14, 2002 in the action United States of America and the State of Montana v. Atlantic Richfield Company, et al., Civ. Action No. 2:02-CV-00035-SEH (the "Butte Mine Flooding Consent Decree"), pursuant to which ASARCO, ASARCO Master, and the other Settling Defendants agreed to, among other things, undertake certain remediation as set forth in the Consent Decree with respect to the Butte Mine Flooding Site;

WHEREAS, the United States and the State have alleged ASARCO's liability for the Butte Mine Flooding Site arose from the operations of a partnership, Montana Resources (the "Partnership"), in which both MRI and ASARCO Master previously held general partnership interests, and which owned and/or operated all or portions of the Butte Mine Flooding Site and a copper mine in Butte, Montana (the "Butte Mine").

WHEREAS, ASARCO and ASARCO Master (collectively the "Debtors") filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the "Bankruptcy Case");

WHEREAS, the United States and the State have asserted that they were not required to file claims with respect to Debtors' obligations under the Butte Mine Flooding Consent Decree because, they assert, such obligations are not claims under 11 U.S.C. § 105(5), but that Debtors and any reorganized debtor(s) must comply with such mandatory injunctive and regulatory and compliance obligations. Nevertheless, the United States and the State each filed protective proofs of claim with respect to Debtors' obligations under the Butte Mine Flooding Consent Decree;

WHEREAS, the Debtors have asserted that their obligations under the Butte Mine Flooding Consent Decree give rise to claims that may be discharged in these bankruptcy proceedings;

WHEREAS, some of the Work required under the Butte Mine Flooding Consent Decree has been completed, and other Work remains to be completed;

WHEREAS, the United States on behalf of EPA and the State each filed Proofs of Claim in the Bankruptcy Case (numbers 10746, 11008, 11009 by the United States and numbers 10524, 10525, 10526, 10527 by the State) setting forth liabilities under Section 107 of CERCLA, 42 U.S.C. § 9607, in connection with the Butte Mine Flooding Consent Decree;

WHEREAS, MRI also filed Proofs of Claim (numbers 10872 and 10876) asserting various claims against ASARCO relating to the Butte Mine Flooding Consent Decree and other alleged obligations of Debtors. In particular, MRI filed claims seeking: (1) recovery of past costs incurred by the Partnership in connection with complying with the Butte Mine Flooding Consent Decree and in performing reclamation activities at the Butte Mine (the "MRI Past Costs Claim"); (2) recovery for costs to be incurred in the future by the Partnership in connection with complying with the Butte Mine Flooding Consent Decree (the "MRI Future Remediation Claim"); (3) recovery for costs to be incurred in the future by the Partnership in connection with performing reclamation activities at the Butte Mine (the "MRI Future Reclamation Claim"); and (4) recovery for amounts that the Partnership will have paid to ARCO to resolve ARCO's claim for contribution with respect to natural resource damages paid by ARCO to the State (the "MRI Natural Resource Damages Claim");

WHEREAS, in addition to the MRI Natural Resource Damages Claim included in the MRI Proofs of Claim, MRI filed Proofs of Claim numbers 11570 and 11571 on behalf of ARCO

(the "MRI-ARCO Proofs of Claim"). ARCO was substituted as creditor with respect to the MRI-ARCO Proofs of Claim under Federal Rule of Bankruptcy Procedure 3005(b). ARCO has transferred those claims to MRI, and this Settlement Agreement is intended to resolve both the MRI Natural Resource Damages Claim and the MRI-ARCO Proofs of Claim (collectively the "MRI-ARCO Natural Resource Damages Claims");

WHEREAS, the MRI-ARCO Natural Resource Damages Claims relate to settlements that ARCO entered into in 1999, as part of Consent Decrees entered in the United States District Court for the District of Montana, with the State, the Confederated Salish and Kootenai Tribes, and the United States which, among other things, settled certain natural resource damages claims relating to the Upper Clark Fork River basin, including certain claims relating to mining and related activities in Butte, Montana (the "NRD Settlements"). Pursuant to the terms of the NRD Settlements, ARCO paid \$133 million, plus conveyed \$2 million in property, to resolve certain of the State's claims for natural resource damages. ARCO has contended that the Partnership and its partners are liable in contribution for a portion of the natural resource damages addressed by the NRD Settlements and that the Partnership and its partners should pay in contribution a share of the sums that ARCO paid in the NRD Settlements;

WHEREAS, MRI has asserted that pursuant to the May 31, 1989 Amended and Restated Agreement of General Partnership of Montana Resources (the "Partnership Agreement"), ASARCO is liable for 49.9% of the liabilities arising out of the Partnership's operations prior to the time of the dilution of ASARCO Master's partnership interest in 2002 and 2003;

WHEREAS, ASARCO has disputed the amount of the liabilities with respect to the Butte Mine Flooding Site filed by the United States, the State, and MRI as set forth in the Proofs of Claim and various expert reports submitted by the United States, the State and MRI;

WHEREAS, the Court established a process for estimating the liabilities of the United States, the State, and MRI with respect to the Butte-Mine Flooding Site;

WHEREAS, the parties hereto desire to settle, compromise and resolve those disputes which may have otherwise been the subject of an estimation hearing, without the necessity of an estimation hearing;

WHEREAS, the Debtors and MRI are parties to an adversary proceeding in which Debtors seek to avoid the dilution of ASARCO Master's ownership interest in the Partnership. The Partnership owns and/or operates portions of the Butte Mine Flooding Site and the Butte Mine;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the parties hereby agree to the terms and provisions of this Partial Settlement Agreement ("Settlement Agreement"); and

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their attorneys and authorized officials, it is hereby agreed as follows:

I. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, and any trustee, examiner or

receiver appointed in the Bankruptcy Case.

III. ALLOWANCE OF CLAIMS

3. Except as provided in Paragraph 17 and Section VIII, in settlement and satisfaction of all claims and causes of action of the United States, the State, and MRI against Debtors with respect to any and all costs of response incurred or to be incurred in connection with the Butte Mine Flooding Site, and the claims and causes of action of MRI with respect to natural resource damages incurred or to be incurred in connection with the SBCB Site, (including but not limited to the liabilities and other obligations asserted in the Proofs of Claim and other pleadings filed in the Bankruptcy Court by the United States, the State, and MRI):

(a) MRI shall have an allowed general unsecured claim in the total amount of \$8,670,147 for the MRI Future Remediation Claim which shall not be subject to disallowance under 11 U.S.C. § 502(d) or any other provision of the Bankruptcy Code; (b) the MRI Past Costs Claim shall be and hereby is estimated at \$5,259,108 for all purposes, provided that the foregoing shall not preclude Debtors from seeking disallowance of such claim under 11 U.S.C. § 502(d) based on the Adversary Proceeding referenced in Paragraph 17 nor shall it preclude MRI from contesting any such request for disallowance; and (c) the MRI-ARCO Natural Resource Damages Claim shall be and hereby is estimated in the total amount of \$4,850,000 for all purposes, provided that the foregoing shall not preclude Debtors from seeking disallowance of such claim under 11 U.S.C. § 502(d) based on the Adversary Proceeding referenced in Paragraph 17 nor shall it preclude MRI from contesting any such request for disallowance.

4. All allowed claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of allowed claims, including without limitation Sections 105 and 510 of the Bankruptcy Code.

5. This Settlement Agreement does not address or resolve in any way the MRI Future Reclamation Claim or the estimation of that claim. Such claim shall be estimated in accordance with such processes as shall be agreed to by the parties and/or established by the Court; provided that this Settlement Agreement does resolve the estimation of MRI's claim for the costs of reclamation incurred prior to the effective date of this Settlement Agreement.

6. This Settlement Agreement in no way impairs the scope and effect of the Debtors' discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

IV. MRI FUTURE REMEDIATION CLAIM ESCROW

7. Upon receipt of any distributions on the MRI Future Remediation Claim, whether through the sale of that claim, under a Plan of Reorganization, or otherwise, MRI shall deposit such proceeds into an escrow account ("Escrow Account") to be established by MRI for the sole purposes of holding and distributing such proceeds. Funds, whether principal or accrued interest, may be disbursed from the Escrow Account only to pay the costs of Work under the Butte Mine Flooding Consent Decree, or to reimburse MRI or the Partnership for costs of Work incurred after the Effective Date hereof. The escrow agreement establishing the Escrow Account shall provide that in seeking disbursements from the Escrow Account, MRI or the Partnership shall certify in writing that the requested disbursement is for payment or reimbursements of the costs of Work under the Butte Mine Flooding Consent Decree in accordance with this Settlement Agreement. MRI shall provide an annual report to all parties who are designated to receive notice under the terms of the Butte Mine Flooding Consent Decree containing (i) the balance in the escrow account, (ii) account identification information, (iii) the amount disbursed from the account during the prior year, and (iv) a summary of the uses of such disbursements. Once the

balance in the Escrow Account has been reduced to zero, MRI shall provide a final report to all parties who are designated to receive notice under the terms of the Butte Mine Flooding Consent Decree with the foregoing, and no further reporting shall be required.

V. OUTSTANDING OBLIGATIONS

8. Except as specifically provided in Paragraph 17, all obligations of Debtors to perform Work under the Butte Mine Flooding Consent Decree, and any other outstanding Consent Decree, Unilateral Administrative Order ("UAO"), or Administrative Order on Consent relating to the Butte Mine Flooding Site are fully resolved and satisfied and Debtors shall be removed as parties to such orders or decrees pursuant to the terms hereof. Except as specifically provided in Paragraph 17, such Consent Decree, UAO, or Administrative Order on Consent shall be modified or otherwise conformed to the terms of this Settlement Agreement. Moreover, MRI agrees that ASARCO is not a signatory to and has no obligations under the NRD Settlements.

VI. COVENANTS NOT TO SUE

9. With respect the SBCB Site (including any and all response costs relating to any release or threatened release of a hazardous substance at or from any portion of the SBCB Site and any and all costs related to natural resource damages) and except as specifically provided in Paragraph 5 with respect to the MRI Future Reclamation Claim and Sections VII (The Pending Adversary Proceeding) and VIII (Reservation of Rights), (i) MRI covenants not to sue or assert any civil claims or causes of action against Debtors pursuant to Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, any similar state law, pursuant to any contract, or for any liabilities or obligations asserted in its Proof of Claim, and (ii) Debtors covenant not to sue or assert any civil claims or causes of action against MRI pursuant to Sections 106, 107, and

113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613, any similar state law or pursuant to any contract.

10. Except as specifically provided in Paragraph 17 and Section VIII (Reservation of Rights), the United States and the State covenant not to sue or assert any civil claims or causes of action against Debtors pursuant to Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, or any similar state law, for any costs of response incurred or to be incurred at the Butte Mine Flooding Site, and for any liabilities or obligations asserted in their Proofs of Claim with regard to the Butte Mine Flooding Site.

11. Except as provided in Paragraph 17 and Section VIII, EPA, the State, and MRI agree that upon confirmation of a plan of reorganization in the Bankruptcy Case, any and all obligations or liabilities of Debtors related to the SBCB site will be discharged. Moreover, EPA, the State, and MRI agree not to attempt to assert a claim in the Bankruptcy Case for such obligations or liabilities, except (1) as to MRI, MRI's right to pursue the MRI Future Reclamation claim and (2) as to the United States and the State, as provided in Paragraph 17 and Section VIII.

12. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 9 through 11 and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to Debtors' successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of either Debtor is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of such Debtor.

13. The covenants not to sue contained in Paragraphs 9 through 11 of this Settlement

Agreement extend only to Debtors and the persons described in Paragraph 12 above, and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the United States, the State, Debtors, and MRI and the persons described in Paragraph 12. The United States, the State, Debtors, and MRI expressly reserve all claims, demands, and causes of action either judicial or administrative, past, present or future, in law or equity, which these entities may have against all other persons, firms, corporations, entities, or predecessors of Debtors for any matter arising at or relating in any manner to the sites or claims addressed herein.

14. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the State to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States or the State under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., or any other applicable law or regulation.

15. Debtors covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Butte Mine Flooding Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612,

9613, or any other provision of law (or similar claim for reimbursement under State law); any claims against the United States or the State, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613 or comparable provisions under State law; and any claims arising out of response activities at the Butte Mine Flooding Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

VII. THE PENDING ADVERSARY PROCEEDING

16. Except as provided in section (a) of Paragraph 3, herein, Debtors and MRI reserve all of their claims, defenses, and substantive and procedural rights and positions in the pending adversary proceeding ASARCO Master, Inc. and ASARCO LLC v. Montana Resources, Inc., No. 07-2024 (the "Adversary Proceeding"). Nothing herein nor the entry into this Settlement Agreement shall affect the claims, defenses and substantive and procedural rights and positions of Debtors and MRI in the Adversary Proceeding, including without limitation, the respective positions of the parties as to whether or not there is an entitlement to a jury trial for the Adversary Proceeding.

17. Upon a judicial finding, or stipulation (and such a finding may be made by the Bankruptcy Court) that Debtors, either of them, or a subsidiary or any affiliated entity of either of them, has obtained a direct ownership interest in or become an operator of the Butte Mine Flooding Site through settlement or litigation in the Adversary Proceeding or otherwise, the entity against which such finding or stipulation applies shall be reinstated as a Settling Defendant in the Butte Mine Flooding Consent Decree, and the United States and the State may proceed against such entity relating to: (i) any liabilities or obligations that arise after the entity acquires

such ownership or operator interest; (ii) any reopener provisions in the Butte Mine Flooding Consent Decree; or (iii) the failure of the Settling Defendants to complete the Work required under the Butte Mine Flooding Consent Decree to the extent such liability exceeds the balance of the Escrow Account to secure the remediation of the Butte Mine Flooding Site.

VIII. RESERVATION OF RIGHTS

18. The covenants not to sue herein do not pertain to any matters other than those expressly specified therein. MRI reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors or other persons with respect to all other matters, including but not limited to any action to enforce the terms of this Settlement Agreement. The United States and the State reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtors or other persons with respect to all other matters, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement; and (ii) liability for response costs, response actions, and injunctive relief under CERCLA arising from Debtors' future conduct that occurs after the date of this Settlement Agreement. Solely for the purposes of this Paragraph, continuing releases arising from Debtors' pre-petition conduct at the SBCB Site are not future conduct. Moreover, conduct that moves or disturbs existing contamination, if it does not cause new releases or exacerbate existing contamination, shall not create liability for Debtors under (ii) of this section.

19. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as specifically provided in this Settlement Agreement as to the Debtors, nothing in this Settlement Agreement shall be construed to alter any Settling Defendant's rights and obligations under the Butte Mine Flooding Consent Decree, and the United States and State specifically reserve all of

their rights against the Settling Defendants other than Debtors under the Butte Mine Flooding Consent Decree.

IX. CONTRIBUTION PROTECTION

20. Except as provided under Paragraph 17 and Section VIII above, the parties hereto agree that, as of the Effective Date, Debtors are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) for matters addressed in this Settlement Agreement which include all costs of response with respect to the Butte Mine Flooding Site.

X. JUDICIAL APPROVAL

21. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019 and by the U.S. District Court for the District of Montana (the "Montana District Court"). This Settlement Agreement shall also be lodged with the Montana District Court and submitted for public comment following notice of the Settlement Agreement in the Federal Register. The United States and the State reserve the right to withdraw or withhold consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

22. The Debtors shall move promptly for Bankruptcy Court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval. This Settlement Agreement shall not be effective until it is approved by both the Bankruptcy Court under Rule 9019 and the Montana District Court following public comment as a modification to the Butte Mine Flooding Consent Decree. If this Settlement Agreement is not authorized and approved by both the Bankruptcy Court and the Montana District Court, this

Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of any party with respect to the matters contained herein.

XI. RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Settlement Agreement parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms. The Montana District Court retains jurisdiction for all other matters related to the Butte Mine Flooding Consent Decree, including modification and enforcement of the Butte Mine Flooding Consent Decree.

XII. EFFECTIVE DATE

24. The Effective Date of this Settlement Agreement shall be the later of the dates upon which it has been approved by the Bankruptcy Court and by the Montana District Court.

XIII. SIGNATORIES/SERVICE

25. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES

Date:

/s/ Ronald Tenpas

Ronald J. Tenpas
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date:

/s/ Alan Tenebaum

Alan S. Tenebaum
David L. Dain
Leslie Lehnert
Environment and Natural Resources Division
Environmental Enforcement Section

Date:

/s/ Carol Rushin

Carol Rushin
Assistant Regional Administrator
Office of Ecosystems Protection & Remediation
U.S. EPA, Region 8

Date:

/s/ Michael T. Risner

Michael T. Risner
Director - Legal Enforcement
Office of Enforcement, Compliance and
Environmental Justice
U.S. EPA, Region 8

FOR THE STATE OF MONTANA

Date:

/s/ Richard H. Oppen
Richard H. Oppen
Director
Montana Department of Environmental Quality

Date:

/s/ Mary Capdeville
Mary Capdeville
Assistant Attorney General
Montana Department of Justice

FOR ASARCO:

Date:

/s/ Thomas Alrich
Thomas L. Aldrich
Vice President, Environmental
Affairs

Date:

/s/ John Low
John Low
Vice President, Mining

FOR ASARCO MASTER, Inc.:

/s/ D.E. McAllister
Doug McAllister
President

/s/ Thomas Alrich
Thomas L. Aldrich
Vice President

FOR Montana Resources Inc. :

Date:

/s/Lawrence R. Simkins

Lawrence R. Simkins
President

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

**ORDER APPROVING COMPROMISE AND SETTLEMENT BETWEEN ASARCO LLC
AND VARIOUS GOVERNMENTAL AND PRIVATE ENTITIES REGARDING
THE SILVER BOW CREEK/BUTTE SUPERFUND SITE AND BUTTE MINE**

Upon consideration of the Motion for Order Approving Compromise and Settlement Between ASARCO LLC and Various Governmental and Private Entities Regarding the Silver Bow Creek/Butte Superfund Site and Butte Mine (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the compromise and settlement among ASARCO, LLC ("ASARCO"), the United States of America, the State of Montana, and Montana Resources, Inc., as set forth in Exhibit A to the Motion, is approved; and it is further

ORDERED that, upon obtaining entry of orders from the United States District Court for the District of Montana modifying an existing consent decree, ASARCO is authorized to enter into and implement the settlements; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

RECEIVED
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20535

RECEIVED
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20535

DEC 8 1991

MONTANA OFFICE